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signed 10-31-01

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

MICHAEL B. MYERS,

DEBTOR.

**CASE NO. 01-41991-11
CHAPTER 11**

ORDER GRANTING RELIEF FROM STAY

This matter is before the Court on the debtor's estranged spouse's motion for stay relief. The spouse, Cheryl Myers, appears by counsel Jonathan C. Becker. The debtor appears *pro se*. The Court has reviewed the relevant pleadings and is now ready to rule.

Before the debtor filed for bankruptcy, he and Ms. Myers were involved in a divorce proceeding pending in a Kansas state court. The question now to be resolved is whether the state court should be allowed to proceed in the divorce action to divide the parties' marital property and grant them a divorce. For the reasons that follow, the Court will grant such relief.

The filing of a bankruptcy petition creates an estate that is comprised of essentially all the legal or equitable interests of the debtor in property. 11 U.S.C.A. §541(a). For the most part, a debtor's interests in property are created and defined by state law. *Butner v. United States*, 440 U.S. 48, 55 (1979). Under Kansas law, the filing of a divorce petition creates a species of common or co-ownership (commonly known as "marital property") in all of the real and personal property individually or jointly owned by the husband and the wife. *Cady v. Cady*, 224 Kan. 339, 344 (1978); *see also* K.S.A. 2000 Supp. 23-201(b). The extent of each spouse's interest in the marital property is to be determined pursuant to K.S.A. 2000 Supp. 60-1610(b)(1). "Until that determination is made by the

trial court, the property is not subject to a lien or execution based upon a judgment obtained against one spouse during the pendency of the divorce action.” *In re Marriage of Smith*, 241 Kan. 249, 256 (1987).

Thus, when he filed for bankruptcy, the debtor had an undetermined interest in all of the marital property but had no set interest in any of it. Until a court determines the interests to be awarded to each of the parties in the divorce, the content of the debtor’s bankruptcy estate will remain undefined. In most respects, until a property division is made, the marital property is like property *in custodia legis*. This Court will grant stay relief to allow the state court to divide the marital property between the debtor and Ms. Myers, and to determine whether the parties should be granted a divorce. The stay will remain in effect, however, as to: (1) any property that the debtor has acquired since the divorce petition was filed; (2) other creditors of the debtor; and (3) any executions, attachments, garnishments, or similar proceedings arising in the divorce proceeding. The Court notes that, under 11 U.S.C.A. §362(b)(2), the stay does not apply to the state court divorce proceeding to the extent it involves the establishment or modification of an order for alimony, maintenance, or support, or the collection of such items from property that is not property of the bankruptcy estate.

. Stay relief is hereby granted to the extent described above.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 31st day of October, 2001.

JAMES A. PUSATERI
CHIEF BANKRUPTCY JUDGE